

OPINION

The sole issue presented for review is whether the evidence contained in the record is sufficient to support a finding by a rational trier of fact that the appellant, Terry Mauk, is guilty of theft under \$500 beyond a reasonable doubt. The jury convicted the appellant, and the trial court sentenced the appellant to confinement for eleven (11) months and twenty-nine (29) days in the Hamblen County Jail. After a thorough review of the record, the briefs submitted by the parties, and the authorities which govern the issue, it is the judgment of this Court that the judgment of the trial court should be affirmed.

On April 1, 1995, K-Mart security officers began surveilling the activities of Christopher Reed, a cashier employed by K-Mart. Surveillance cameras were focused on Reed, the cash register, and the customers who paid Reed for their respective purchases.

On June 7, 1995, the appellant purchased three bags of soil. A disc which contained the quantity purchased and the price code was used to record the purchase. This permitted a customer to pay for bulky purchases without having to carry the merchandise to the cashier and then remove it from the store. The appellant approached the cash register operated by Reed. He placed a pair of shoes on Reed's side of the scanner. Reed scanned the disc; however, he did not remove the disc. He pretended to scan a gas grill burner. The gas grill burner was placed in a plastic bag. The appellant paid for the bags of soil he purchased. He then reached on the opposite side of the counter, placed the shoes in the plastic bag, and left the store.

The security officers captured this transaction on video tape. Later, an officer compared the video tape against the cash register tape for the date in question. The analysis revealed the appellant did not pay for the shoes and the gas grill burner. The value of these two items was \$54.96. The video tape was shown to the jury. The jury was also shown the cash register tape concerning the transaction.

When an accused challenges the sufficiency of the convicting evidence, this Court must review the record to determine if the evidence adduced at trial is sufficient "to support the finding by the trier of fact of guilt beyond a reasonable doubt." Tenn. R. App. P. 13(e). This rule is applicable to findings of guilt based upon direct evidence, circumstantial

evidence, or a combination of direct and circumstantial evidence. State v. Dykes, 803 S.W.2d 250, 253 (Tenn. Crim. App.), per. app. denied (Tenn. 1990).

In determining the sufficiency of the convicting evidence, this Court does not reweigh or reevaluate the evidence. State v. Matthews, 805 S.W.2d 776, 779 (Tenn. Crim. App.), per. app. denied (Tenn. 1990). Nor may this Court substitute its inferences for those drawn by the trier of fact from circumstantial evidence. Liakas v. State, 199 Tenn. 298, 305, 286 S.W.2d 856, 859, cert. denied, 352 U.S. 845, 77 S.Ct. 39, 1 L.Ed.2d 49 (1956). To the contrary, this Court is required to afford the State of Tennessee the strongest legitimate view of the evidence contained in the record as well as all reasonable and legitimate inferences which may be drawn from the evidence. State v. Cabbage, 571 S.W.2d 832, 835 (Tenn. 1978).

Questions concerning the credibility of the witnesses, the weight and value to be given the evidence, as well as all factual issues raised by the evidence are resolved by the trier of fact, not this Court. Cabbage, 571 S.W.2d at 835. In State v. Grace, 493 S.W.2d 474, 476 (Tenn. 1973), our Supreme Court said: "A guilty verdict by the jury, approved by the trial judge, accredits the testimony of the witnesses for the State and resolves all conflicts in favor of the theory of the State."

Since a verdict of guilt removes the presumption of innocence and replaces it with a presumption of guilt, the accused, as the appellant, has the burden in this Court of illustrating why the evidence is insufficient to support the verdicts returned by the trier of fact. State v. Tuggle, 639 S.W.2d 913, 914 (Tenn. 1982). This Court will not disturb a verdict of guilt due to the sufficiency of the evidence unless the facts contained in the record are insufficient, as a matter of law, for a rational trier of fact to find that the accused is guilty beyond a reasonable doubt. Tuggle, 639 S.W.2d at 914.

Before an accused can be convicted of the offense of theft, the State of Tennessee must prove beyond a reasonable doubt that (a) the accused either knowingly received or exercised control over property without the owner's consent and (b) the accused possessed the property with the intent to deprive the owner of the property. Tenn. Code Ann. § 39-14-103. In this case, the State of Tennessee established the elements of theft beyond a reasonable doubt. Tenn. R. App. P. 13(e).

The appellant admitted he vaguely knew Christopher Reed. He knew he did not pay for the gas grill burner and there was no intent to scan the shoes. Reed did not have the authority to give merchandise to customers.

JOE B. JONES, PRESIDING JUDGE

CONCUR:

DAVID G. HAYES, JUDGE

WILLIAM M. DENDER, SPECIAL JUDGE